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6 October 1995

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W. - Suite 220
Washington, D.C. 20554

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OCT 6 - 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: WT Docket No. 94-147
STATUS REPORT OF JAMES A. KAY, JR.

Dear Judge Sippel:

On behalf of James A. Kay, Jr., and in compliance with your October 2, 1995 Order (FCC 95M-191) in the above-referenced proceeding, we hereby submit the *Status Report of James A. Kay, Jr.*

Since issuance of the June 21, 1995 Order (FCC 95M-144), Mr. Kay has been working diligently to negotiate agreements for the disposition of the subject facilities in accordance with the terms of the *Memorandum of Understanding* ("MOU"). Mr. Kay's past and ongoing efforts, which have been numerous and extensive, include, but are not limited to: (1) the preparation of a packet of information, to be distributed to potential buyers, describing the particulars of the various facilities;¹ (2) engaging the services of at least four different brokers with expertise in the acquisition and disposition of communications facilities; (3) independent of these brokers, contacting by phone, letter, and/or personal meeting and no fewer than thirty individuals or firms and providing them with a copy of the aforementioned information packet;² (4) commissioning an independent expert appraisal to assess the fair market value of the subject facilities; (5) retaining the services of a business attorney to assist in negotiations, prepare agreements, and advise on tax law and other general and business legal matters; and (6) qualifying and responding to various expressions of interest and bids and entering into bidding and/or negotiation with viable candidates.

As a result of these efforts, Mr. Kay has completed negotiations and entered into firm letters of intent for the transfer of nine channels (representing approximately fifteen of the subject stations) to public safety interests. As to the remaining facilities, he is currently in various stages of active bidding and/or negotiation with three potential buyers. As to one of these, Mr. Kay has received an expression of interest and has tendered a response outlining his desired terms for further discussion. As to another, the parties have engaged in significant negotiations as to terms, conditions, and structure of the proposed arrangement, and are still negotiating as to price, payment terms, and security issues.

¹ Starting early in the stay period, Kay has repeatedly requested the Bureau to confirm a list of the stations and call signs that it would allow to be sold pursuant to the MOU so that Kay may provide this list to potential buyers. To date the Bureau has not provided this to Kay.

² Those approached have included not only individuals and firms engaged in the communications business and other business persons who might be interested, but also engineers, consultants, attorneys, bankers, etc., among whose clients may be potentially interested parties. Moreover, such contacts and efforts by Mr. Kay personally have been supplemented by the indirect efforts on his behalf by attorneys, consultants, advisors, friends, and other third parties.

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Mr. Kay's ongoing negotiations with the third active bidder, while not complete, appear the most likely to result in an agreement that is both mutually acceptable to the parties and substantially compliant with the MOU. The parties have a mutual understanding as to price (which would result in Mr. Kay selling the remaining subject facilities at substantially less than their appraised fair market value) but are still negotiating various other terms and conditions. Mr. Kay intends to pursue this possibility as diligently as possible, but it does not appear likely that an agreement will be reached prior to October 20, 1995. Even if the parties are able to reach even an interim³ agreement prior to that time, which Mr. Kay will make every effort to do, there is very little likelihood that the matter could be presented to the Bureau in sufficient time for the preparation and timely submission of a proposed settlement agreement.

We assure the presiding judge that the inability to meet the specified October 20 deadline is due entirely to circumstances beyond Mr. Kay's control. Negotiating agreement terms that comply with the terms of the MOU has proven to be extremely difficult.⁴ To cite one example, potential purchasers are understandably unwilling to pay anything more than a nominal deposit prior to Commission approval of the anticipated license assignment applications becoming "final" (i.e., no longer subject to potential review, reconsideration, or appeal),⁵ whereas the MOU requires Mr. Kay to make a contribution to the U.S. Treasury of 30% of the entire purchase price within ten days of Commission grant of the applications. Similarly, to highlight only one additional example, any transaction that involves Mr. Kay financing all or any portion of the purchase price (as two of the potential deals under active negotiation do) is problematic in that the terms of the MOU appear to prevent the most common means of securing such debt, namely, the seller's taking of a security interest in the licenses (to the extent permitted by law), stock or other equity in the licensee, and/or the associated station assets.

In addition to these general problems, completion of the most promising of the active negotiations (the third of the three potential deals noted above) has been unavoidably delayed by the current absence of the potential buyer's principal (who, Mr. Kay is advised, has been out of his office since approximately mid-September and will not return until at least next week). Moreover, Mr. Kay's business attorney (Ms. Carol May, Esq.), who has been his principal representative in negotiating the deal, is leaving the country on business and will not return until the end of the month.⁶

³ Mr. Kay does not necessarily intend to await a final purchase agreement to begin negotiations on the settlement agreement. Kay and the bidder may be able to enter into a firm letter of intent (giving the Bureau comfort as to the likelihood of a final agreement) and then begin framing the settlement agreement in tandem with final negotiations on the purchase contract. Until such time as a binding (albeit potentially conditional) commitment is secured from the buyer, however, Mr. Kay is not able to disclose the identity of the bidder or the terms under negotiation, and so can not begin working with the Bureau on a settlement package. If so directed, Mr. Kay will disclose the identity of the potential buyer and the general terms under discussion to the presiding judge for *in camera* inspection, but can not disclose this information to the Bureau at this stage of the negotiations.

⁴ Mr. Kay understands that the MOU is an agreement to which he is party. These problems are not cited as complaints or arguments, but rather as examples of the factual reasons why timely completion of negotiations has been hampered. If it develops that the only thing preventing a final agreement is one or more of the MOU provisions, Mr. Kay intends to approach the Bureau with a firm letter of intent (see note 2, above) to determine whether any adjustment can be made to facilitate a deal, in compliance with applicable laws, regulations, and policies, and subject, of course, to ultimate approval by the presiding judge and/or the Commission.

⁵ It is standard business practice to so condition purchase contracts involving FCC authorizations, and in cases where the transaction is to be partially or totally financed with borrowed funds, lenders uniformly insist on it as a condition to any loan or credit agreement.

⁶ Ms. May will be available by telephone during the first week or so of her trip (and Mr. Kay will make use of this availability, as needed, to attempt to complete negotiations), but she will be difficult if not impossible to reach for the balance of her absence.


Mr. Kay wants there to be no doubt that it is his sincere desire to resolve this matter without hearing and it is his good faith intention to arrive at a settlement agreement consistent with the terms of the MOU in an effort to achieve that goal. To that end, Mr. Kay will continue to do everything possible to make as much progress as possible as rapidly as possible,⁷ but the presentation of a proposed settlement agreement by October 20, 1995, is nonetheless virtually impossible.

Accordingly, Mr. Kay respectfully suggests a brief continuance of the stay until November 30, 1995. We are reluctant to suggest this additional delay, and would not do so if we did not believe the chances for final resolution were good. The date of November 30 is suggested in order to allow sufficient time after the return of Mr. Kay's business attorney to the country (at the end of this month) for completion of negotiations on a purchase agreement and, thereupon, the joint preparation of a settlement package with the Bureau for timely submission to the presiding judge.

We respectfully submit that the requested continuance is justified by (1) Mr. Kay's diligent efforts thus far coupled with unique difficulties, only partially summarized above, that are beyond his control, (2) the good faith demonstrated by an agreement for the sale of a portion of the stations, (3) the public interest benefits of the prompt disposition of a number of the subject channels to public safety use, (3) the existence of active bidding/negotiation with at least three potential buyers for the balance of the subject facilities, at least one of which appears likely to result in an agreement, and (4) the public interest benefits of final resolution of this proceeding without the expenditure of extensive private and public resources on what will otherwise be a lengthy a difficult litigation

We will promptly submit the foregoing request as a formal motion if the presiding judge so requests.

Very truly yours,


Robert J. Keller
Counsel for James A. Kay, Jr.

cc: All Parties of Record in WT Docket No. 94-177

⁷ That does not mean, however, that Mr. Kay is going to (as Bureau counsel has suggested he should) "take any offer he can get regardless of the terms." The MOU requires that Kay abandon a business that has been his livelihood for more than a decade—something he will do only on business terms he can live with. Under the circumstances, he will certainly compromise—for example, Mr. Kay is currently negotiating the terms and conditions of a deal in which he as already agreed in principle to a purchase price for the bulk of the subject stations that is substantially below their independently appraised fair market value. But if the best deal he can secure is not compromise, but rather business and economic suicide, he will have no other viable option than to defend his livelihood at hearing, and it is not productive to the settlement process for the Bureau to suggest that there is something improper about that. It is, after all, the Bureau that bears the burden of proving that Mr. Kay is unqualified to hold the licenses. If the Bureau wanted to dictate mandatory business terms that Kay must accept no matter how adverse, it should have attempted to negotiate that right as part of the MOU.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

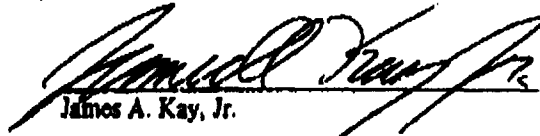
In re Applications of)	
)	
JAMES A. KAY, JR.)	WT Docket No. 94-147
)	
Licensees of one hundred sixty four Part 90)	
licenses in the Los Angeles, California area.)	

DECLARATION OF MR. JAMES A. KAY, JR.

I, James A. Kay, Jr., hereby depose and state that I have assisted special communications counsel in drafting the foregoing letter, dated October 6, 1995, providing a status report pursuant to the presiding judge's October 2, 1995 Order (FCC 95M-191); that I am personally familiar with the matters discussed in the letter; and that all of the representations and factual assertions set forth in such letter are true and correct to the best of my personal knowledge and are made in good faith.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct of my personal knowledge.

Subscribed and sworn to by me this 6th day of October, 1995.


James A. Kay, Jr.

Note: Original execution of
declaration will be filed
upon receipt by counsel.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred sixty four Part 90)
Licenses in the Los Angeles, California, Area)

To: Administrative Law Judge Richard L. Sippel

WIRELESS TELECOMMUNICATIONS BUREAU'S
STATUS REPORT

1. By Order, FCC 95M-191 (released October 2, 1995), the Presiding Judge directed the parties to submit, by October 6, 1995, a report on the status of efforts to effectuate a settlement of this proceeding. The Wireless Telecommunications Bureau hereby submits its report.

2. By Order, FCC 95M-144 (released June 21, 1995), the Presiding Judge issued a 120-day stay of this proceeding to, among other things, allow James A Kay, Jr. ("Kay") the opportunity to arrange for the divestiture of his licenses by relinquishment and/or by assignment. It was contemplated that by October 20, 1995, Kay would be in a position to present to the Presiding Judge a complete settlement package consisting of, among other things, executed contracts for the sale of most of his stations, executed applications for the assignment of most of his licenses, and requests to relinquish his remaining authorizations.

3. The Bureau has heretofore provided Kay with a comprehensive list of stations that he may sell and those that he must surrender, pursuant to the proposed settlement. During the stay period, Bureau counsel discussed procedural matters and technical aspects involving the sale of Kay's stations with Kay's counsel and with potential purchasers when requested by Kay's counsel. The burdens of locating buyers, negotiating terms and prices, entering into contracts for sale, and executing applications for assignment of license are necessarily on Kay. Consequently, the Bureau is unable to report on the results of Kay's efforts to sell his stations and assign his licenses.¹

Respectfully submitted,
Regina M Keeney
Chief, Wireless Telecommunications Bureau



W. Riley Hollingsworth
Deputy Associate Bureau Chief



William H. Kellett
Gary P. Schonman
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October 6, 1995

¹ If, in his status report, Kay reveals that he has not yet executed all pertinent sales contracts and assignment applications, the Bureau would urge the Presiding Judge, in light of the forthcoming October 20, 1995, deadline, to remind Kay that his failure to do so by the end of the stay period will be cause for promptly returning this case to hearing status.

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certify that I have, on this 6th day of October 1995, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Status Report" to:

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Michelle C. Mebane